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10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA**  
12 **WESTERN DIVISION**

13 JESUS PIMENTEL, DAVID R.  
14 WELCH, JEFFREY O'CONNELL,  
15 EDWARD LEE, WENDY COOPER,  
16 JACKLYN BAIRD, ANTHONY  
17 RODRIGUEZ, RAFAEL BUELNA,  
18 ELEN KARAPETYAN, and all persons  
similarly situated,

19 Plaintiffs,

20 V.

21 CITY OF LOS ANGELES

22 Defendant.

CASE NO. 2:14-cv-01371-FMO (Ex)

**SUPPLEMENTAL MEMORANDUM  
OF POINTS AND AUTHORITIES IN  
SUPPORT OF DEFENDANT THE  
CITY OF LOS ANGELES' MOTION  
FOR SUMMARY JUDGMENT  
[Fed.R.Civ.P. 56]**

Date: June 1, 2017

Time: 10:00 a.m.

Courtroom: 6D

Hon. Fernando M. Olguin

Complaint Filed: February 24, 2014

Trial Date: None Set

23  
24  
25 COMES NOW Defendant CITY OF LOS ANGELES (hereinafter the "City" or  
26 "Defendant") with its Supplemental Memorandum of Points and Authorities in support  
27 of its Motion for Summary Judgment, authorized by the Court's February 27, 2017  
28 Order (Dkt No. 108).

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## **SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. INTRODUCTION**

This case is ripe for summary judgment since the sole issue in dispute – whether the City’s parking meter penalties violate the Excessive Fines Clause of the federal and state Constitutions – is a simple, straightforward question of law, which can only be answered with a resounding “no.” While it is axiomatic that the burden is on Plaintiffs to prove that the parking meter penalties are so “grossly disproportionate” to the gravity of the offense that the fines are unconstitutional [*U.S. v. Busher*, 817 F.2d 1409, 1415 (9th Cir. 1987)], Plaintiffs have not met their burden.

· Plaintiffs do not cite a single case decision which invalidated a parking fine or required a trial. Conversely, *every Court in the United States* that addressed parking citations has upheld their constitutionality via a dispositive motion: *Popescu v. City of San Diego*, 2008 U.S. Dist. LEXIS 5712 at \*11, 2008 WL 220281 (S.D. Cal. 2008) (Summary Judgment); *Wemhoff v. City of Baltimore*, 591 F.Supp.2d 804, 809 (D.C. MD. 2008) (Motion to Dismiss); *Cain v. Bureau of Admin. Adjudication*, 2016 U.S. Dist. LEXIS 16968, \*13 (E.D. PA. 2016) (Motion to Dismiss); and *Yagman v. Garcetti*, 2017 U.S. App. LEXIS 1030, \*11-12, 2017 WL 242562 (9th Cir. 2017) (Motion to Dismiss).

· Plaintiffs do not cite a single case where the presumption of constitutionality was overcome, or the broad discretion of the legislature was not deferred to, concerning a maximum \$175 fine.

· Plaintiffs do not cite a single decision where any legislative fine in the range of \$63 to \$175 – or anything even remotely close – was found to be a violation of the Eighth Amendment’s Excessive Fines Clause.

Given these gaping holes in Plaintiffs’ arguments, Plaintiffs absurdly contend that they met their burden of proof because the Court denied the City’s Fed.R.Civ.P. 12(b)(6) Motion to Dismiss. (Joint Brief, Dkt. No. 122-3, at p. 21:23-26.) A denial of a Rule 12(b)(6) Motion does not establish a meritorious claim. “[A] well-pleaded

1 complaint may proceed even if it strikes a savvy judge that actual proof of those facts  
2 is improbable, and that a recovery is very remote and unlikely.” *Bell Atl. Corp. v.*  
3 *Twombly*, 550 U.S. 544, 556 (2007); internal citation omitted.

4 This case is long past a motion to dismiss. Plaintiffs had every opportunity to  
5 conduct their discovery and investigation in an attempt to meet their burden. Now that  
6 discovery has closed, Plaintiffs cannot establish that the City’s parking meter fines  
7 violate the United States or California Constitutions. Even accepting as true Plaintiffs’  
8 *arguments* (as no relevant material facts are disputed), Plaintiffs only present opinions  
9 that the City’s parking citations are “too high” and were arbitrarily enacted rather than  
10 based on a bright-line mathematical ratio, which are notions the Courts have repeatedly  
11 rejected. There is no legal or factual basis for this Court to defy precedent, disregard  
12 the strong presumption that the penalties are constitutional, refuse to defer to the broad  
13 authority of the Los Angeles City Council, and *become the first Court in the nation* to  
14 rule that (1) a parking meter penalty – which ranges from \$63 to \$175, inclusive of  
15 fees – is so “grossly disproportionate” to the offense as to be unconstitutionally  
16 excessive, or (2) that there is a triable issue of material fact as to this issue. Plaintiffs’  
17 claims for relief cannot succeed as a matter of law such that summary judgment in the  
18 City’s favor should be granted.

## 19 II. ARGUMENT

### 20 A. No Court in the United States Has Ruled that Parking Fines are 21 Unconstitutional, and this Court Should Not Do So Here.

22 As discussed, *every Court in the nation* that has addressed parking citation  
23 penalties have rendered them constitutional, and has done so via a dispositive motion:  
24 *Popescu v. City of San Diego, supra*, 2008 U.S. Dist. LEXIS 5712 at \*11:  
25 in ruling on a Motion for Summary Judgment, parking fines which ranged from \$47 to  
26 \$104, and resulted in the plaintiff’s inability to register his vehicle, were held  
27 constitutional under the Eighth Amendment. This was despite the Court’s belief that  
28 the initial penalty of \$47 was “overly harsh” and was designed more to increase

1 revenue for the city rather than to deter behavior. *Id.*, at \*12, fn. 2.

2       · *Wemhoff v. City of Baltimore, supra*, 591 F.Supp.2d at 809: the Court  
3 determined on a Motion to Dismiss that a \$519 parking citation (the amount ultimately  
4 owed) – which is hundreds more than the City’s maximum \$175 penalty – was not a  
5 grossly disproportionate fine, and did not violate the Excessive Fines Clause of the  
6 United States or Maryland Constitutions.

7       · *Cain v. Bureau of Admin. Adjudication, supra*, 2016 U.S. Dist. LEXIS  
8 16968 at \*13: a \$51 fine for parking in a no-parking zone was rendered constitutional  
9 under the Eighth Amendment on a Motion to Dismiss.

10       · *Yagman v. Garcetti, supra*, 2017 U.S. App. LEXIS 1030 at \*11-12: the  
11 Ninth Circuit affirmed a Motion to Dismiss ruling that the California Vehicle Code’s  
12 requirement to deposit a contested fine did not violate the Due Process Clause.

13       Accordingly, in each of the three Eighth Amendment decisions (*Popescu*,  
14 *Wemhoff* and *Cain*), the question being addressed, and which was answered in the  
15 negative, was precisely the same question that is posed in this action – whether the  
16 subject parking fines are so grossly disproportionate to the offense as to be  
17 unconstitutional. Hence, contrary to Plaintiffs’ unsuccessful attempts to minimize  
18 these cases, the decisions are relevant and applicable. The respective Courts *all*  
19 determined via dispositive motions that the fines were constitutional under the Eighth  
20 Amendment. Certainly if \$519 (*Wemhoff*), \$104 (*Popescu*), \$51 (*Cain*) and \$47  
21 (*Popescu*) are not excessive, neither can be the City’s parking fines.

22       In stark contrast to this germane authority, Plaintiffs did not present a single  
23 decision from any Court in the country where either (a) a parking fine was found to  
24 violate the Excessive Fines Clause, or (b) where there was a triable issue of material  
25 fact to determine whether a parking fine – or any \$175 maximum fine – was excessive.  
26 Since Plaintiffs have the burden to prove that the City’s parking meter fines are  
27 unconstitutional (*U.S. v. Busher, supra*, 817 F.2d at 1415), presumably if such a  
28



1 decision existed, Plaintiffs would have cited it. Plaintiffs therefore have no authority  
2 for their claims, and cannot as a matter of law prevail on their claims for relief.

3 **B. This Matter is Ripe for Summary Judgment.**

4 There is no dispute that the City's parking meter penalty citations range from \$63  
5 to \$175. (Defendant's Undisputed Material Fact ("UMF") D3- D9, inclusive; Los  
6 Angeles Municipal Code ["LAMC"] §§89.60, 88.13(a), 88.13(b), 89.35.5(a),  
7 89.35.5(b), and 89.35.5(c).) There are no other relevant, admissible, material facts:  
8 either the City's parking meter citation schedule is constitutional under the Excessive  
9 Fines Clause of the Eighth Amendment and the analogous provision in the California  
10 Constitution, or it is not. This case is ripe for the Court's determination on this issue.

11 Plaintiffs' reliance on *United States v. 100,348.00 United States Currency*, 157  
12 F.Supp.2d 1110 (C. D. Cal. 2001) ("*\$100,348*") to argue that a question of fact exists  
13 is misplaced. In *\$100,348*, the federal government filed a civil forfeiture action for  
14 currency that the defendant attempted to transport out of the country without reporting.  
15 The defendant contended that currency belonged to a friend who allegedly obtained it  
16 after selling a retail store, and that the money was being transported to give to the  
17 friend's overseas relative. *Id.*, at 1114. The friend was first identified after the  
18 discovery cut-off date. *Id.*, at 1119. Hence, no discovery was done vis a vis the  
19 defendant's friend or the friend's acquisition and use of the currency. The Court  
20 denied summary judgment finding that there was a genuine issue of material fact as to  
21 whether the currency was related to other illegal activities, and the Court re-opened  
22 discovery as to the defendant's friend. *Id.*, at 1119.

23 Here, in glaring contrast, no such triable issue of material fact exists. Unlike  
24 *\$100,348*, no criminal activities are involved. There is no dispute why the parking  
25 citations are issued, nor is there a dispute concerning the penalty amounts. Unlike the  
26 civil forfeiture in *\$100,348*, the City's parking meter fine is applied uniformly to all  
27 individuals, rather than a specific civil forfeiture applicable to one offender for  
28 currency that was potentially illegally obtained. Given the multiple legal and factual



1 dissimilarities between the two cases, \$100,348 is not applicable, and should be  
 2 disregarded. Conversely, the City's cited cases are pertinent and should govern.

3 **C. None of Plaintiffs' Arguments Create a Trial Issue of Material Fact.**

4 Although Plaintiffs assert various *arguments*, there are no relevant, material *facts*.  
 5 Plaintiffs fundamental arguments are: (i) the city's parking meter penalties are not  
 6 based on a mathematical ratio vis a vis the amount charged by the City to park at  
 7 meters and are arbitrary; (ii) the fines are primarily designed to provide income to the  
 8 City's general fund rather than to deter offenders or assist with parking availability;  
 9 (iii) the fines are more of a burden on low-income people; and (iv) Plaintiffs' failure to  
 10 sufficiently fund their parking meters was inadvertent. Even accepting as true  
 11 Plaintiffs' arguments, they cannot result in a finding that the parking meter fines are  
 12 unconstitutionally excessive as a matter of law. Plaintiffs' overarching theme is that  
 13 parking meter fines are disfavored, and such fines should not exist. While it is  
 14 undeniable that nobody wants to get a parking ticket, and that a fine will be more of a  
 15 burden on certain individuals, this does not render the fines unconstitutional.

16 **1. Policy Considerations Belong in the First Instance to the Los Angeles**  
 17 **City Council.**

18 The parking meter penalties are presumed to be constitutional. *United States v.*  
 19 *817 N.E. 9<sup>th</sup> Drive*, 175 F.3d 1304, 1309 (11th Cir. 1999); *Morrow v. City of San*  
 20 *Diego*, 2011 U.S. Dist. LEXIS 120419 (S.D. Cal. 2011). Additionally, this Court is  
 21 mandated by the Supreme Court to give great deference to the Los Angeles City  
 22 Council in enacting the penalty schedule. *United States v. Bajakajian*, 524 U.S. 321,  
 23 336 (1998). The Supreme Court has repeatedly declared that a legislative body, such  
 24 as the City Council, has extremely broad discretion in setting the range of permissible  
 25 fines. *Id.* Hence, this Court cannot substitute its own opinion for that of the City  
 26 Council unless Plaintiffs overcome the strong presumption of constitutionality and  
 27 prove that the fines are "grossly disproportionate" to the offense, which Plaintiffs did  
 28 not – and cannot – do.

Contrary to Plaintiffs' erroneous arguments (Joint Brief, Dkt. No. 112-3 at p. 25:24-2), the City is not suggesting that the parking meter penalties are immune from this Court's review, nor does the Court's denial of the City's Motion to Dismiss indicate that the Court rejects the deference it must give to the City Council. (*Twombly*, *supra*, 550 U.S. at 556). While the Court can independently review the legislative fine, given the strong presumption of constitutionality and the Court's mandate to defer to the City Council's extremely broad authority, there is no basis for the Court to determine that the City's parking meter penalties are unconstitutional.

Plaintiffs' citation to *Hale v. Morgan*, 22 Cal.3d 388, 405 (1978) is unavailing. *Hale* did not involve a parking fine, nor an Eighth Amendment excessive fines challenge; it addressed California *Civil Code* § 789.3. In *Hale*, the California Supreme Court held that a statutory penalty of \$100 per day, imposed for 173 days which totaled \$17,300 (a far cry from \$175), on a landlord who willfully deprived a tenant of utility services was excessive under the circumstances in that particular case. Importantly, the California Supreme Court emphasized that the subject penalty was excessive because it was cumulative. *Id.*, at 404. The Court indicated that mandatory, substantial, cumulative penalties are suspect. *Id.*, at 401-403. Here, however, it is undisputed that the subject parking meter fines are capped (at \$175) and are not cumulative. (UMF D10- D11.) Further, \$175 is about 99% less than the penalty amount in *Hale*. Thus, the core factors that concerned the Court in *Hale* – and the reason that the authority of the legislature was not deferred to in that case – do not exist here. Plaintiffs have failed to provide any authority for this Court to circumvent well settled Supreme Court precedent, and to disregard the policy decisions implemented by the Los Angeles City Council as well as the strong presumption of constitutionality.

**2. Plaintiffs' Attempts to Require a Mathematical Ratio for the Fines Are Contrary to Settled Precedent and Must be Rejected.**

Plaintiffs' arguments that the Court needs to analyze the ratio of the penalty to the amount of money that was not put in the meter lacks merit, and is not supported.

1 Indeed, the cases cited by Plaintiffs provide the opposite:

2 · *U.S. v. Busher, supra*, 817 F.2d at 1416: in reviewing the constitutionality of a  
3 RICO forfeiture, the Ninth Circuit emphasized that the Eighth Amendment does not  
4 provide a bright line separating punishment that is permissible from that which is not.

5 · *United States v. 1,679 Firearms*, 659 Fed.Appx. 422, 426 (9th Cir. 2016)  
6 (“*1,679 Firearms*”): The Ninth Circuit underscored its repeated admonishment that a  
7 Court cannot mechanically apply a rigid set of factors in determining whether a  
8 forfeiture is excessive.

9 · *BMW of N. America v. Gore*, 517 U.S. 559, 582-583 (1996): in reviewing the  
10 excessiveness of a \$2 million punitive damages award, the Supreme Court stressed that  
11 it has consistently rejected a mathematical formula between the constitutionally  
12 acceptable and constitutionally unacceptable.

13 · *Bajakajian, supra*, 524 U.S. at 336: the Supreme Court cautioned that any  
14 judicial determinations concerning punishments will be “inherently imprecise” and that  
15 strict proportionality should not be imposed.

16 Hence, Plaintiffs’ arguments that the Court should consider a mathematical ratio  
17 expressly violate well-established Supreme Court tenets. This is not a situation where  
18 the penalty is so high that it raises eyebrows, such as what occurred in *Gore* (punitive  
19 damage award of \$2 million following compensatory damages of \$4,000 was held  
20 excessive). “... [T]he forfeiture is not rendered unconstitutional because it exceeds the  
21 harm to the victims or the benefit to the defendant.” *U.S. v. Busher, supra*, 817 F.2d  
22 at 1415. Whether the amount charged at the City’s parking meters should be  
23 increased, or fines lowered by a token amount, or parking services funded through  
24 taxes and meter user fees – arguments that Plaintiffs advocate – are legislative policy  
25 questions. While the parties can engage in an interesting academic exercise as to their  
26 respective opinions concerning the most appropriate policies to implement, such policy  
27 discussions have nothing to do with the Eighth Amendment and have no relevance to  
28 the issues in dispute in this case. Rather, if the current policies are disliked, the

appropriate response is for voters to exercise their rights at the polls.

### 3. Plaintiffs Reject All Justifications for the Parking Meter Penalties.

Astonishingly, Plaintiffs reject the City's rational justifications for parking meter fines. Plaintiffs apparently argue that there is no valid basis to have such fines. Plaintiffs' arguments are absurd and belie clear legislative policy and case authorities.

Deterrence: To be a deterrent, the fine must "sting." *1,679 Firearms, supra*, 659 Fed.Appx. at 426. Thus, the fines are set at a level to have a deterrent effect. Since Plaintiffs admit that only 15% of the fines are issued to repeat offenders (Joint Brief, Dkt No. 112-1 at p. 7:17), the citations must have a deterrent effect because the other 85% of cited drivers presumably want to avoid getting another fine. Plaintiffs' additional argument that there is no deterrence because the meters do not state the amount of the penalty lacks merit for multiple reasons: there is no Due Process violation (9/29/15 Order, Dkt. No. 43, at pp. 12-13), the City's fine schedule is public information (in the LAMC), and drivers understand that a fine is possible if they do not sufficiently fund their meters. Furthermore, in *Popescu, supra*, 2008 U.S. Dist. LEXIS 5712 at \*12, fn. 2, although the Court opined that the parking fine was more designed to increase revenue than to deter, the fine was still constitutional.

#### Parking Spot Turnover and Traffic Flow/ Deprivation of the Public Fisc:

Contrary to Plaintiffs' wrongful characterization, the "harm" to the public is not limited to the additional quarter or dollar that the individuals failed to put in their meters. In addition to depriving the public fisc of money, which Plaintiffs admit funds essential services (UMF D18- D19), the violators also abused their parking privileges and monopolized parking spots. If a parking spot fails to become available, logically businesses will suffer, traffic flow will be deterred, and the community will be harmed.

Inadvertence: The City does not dispute that inadequate funding of a parking meter may be accidental in many incidents. Regardless, a parking meter violator's motive is irrelevant to an Eighth Amendment analysis concerning uniform parking fines. Plaintiffs' citation to forfeiture cases is misplaced. Unlike forfeiture actions

1 where a single offender's motives may be relevant because criminal activities are  
 2 potentially involved, there is no criminal activity here, nor is there any way to  
 3 determine the motive of each person who gets a parking fine. Again, Plaintiffs have  
 4 not cited any decision where motive was relevant to whether uniformly applied  
 5 parking fines are excessive. Even if unintentional, there is no dispute that Plaintiffs'  
 6 citations were valid, thereby warranting a parking meter penalty.

7 **a. Providing Income to the City's General Fund Does Not Render the**  
 8 **Parking Meter Penalties Unconstitutional.**

9 Plaintiffs argue that the parking meter penalties were arbitrarily enacted in order  
 10 to increase revenue for the City's General Fund. Even assuming *arguendo* for  
 11 purposes of this Motion only that the majority of the revenue collected adds income to  
 12 the City's General Fund, this does not render the penalties unconstitutional. The  
 13 Southern District of California expressly rejected this exact argument in *Popescu*,  
 14 *supra*, 2008 U.S. Dist. LEXIS 5712 at \*12, fn. 2. Although Plaintiffs unsuccessfully  
 15 attempt to "down play" the *Popescu* decision, Plaintiffs yet again fail to cite a single  
 16 case decision where generating income from parking fine revenue invalidates the  
 17 *constitutionality* of parking meter penalties. The revenue's use is a policy  
 18 consideration that is best left to the Los Angeles City Council's discretion. Since \$63  
 19 to \$175 cannot by definition be so "grossly disproportionate" to be unconstitutional,  
 20 regardless of the purpose for, or use of, parking fines, they are valid as a matter of law.

21 **4. There is No Separate Eighth Amendment Analysis that Applies to Low**  
 22 **Income People.**

23 The City does not dispute that Los Angeles has low-income residents, and that  
 24 *any* fine will be more of a financial burden on some people versus others. However,  
 25 there is no separate Eighth Amendment analysis for low-income residents; the  
 26 Amendment and the fine apply to all individuals uniformly. While Plaintiffs contend  
 27 that the Court is to take into account the financial situation of the offenders, Plaintiffs  
 28 fail to state how this can possibly be done, nor any authority for it. In those cases



1 where a party's finances were examined in the context of a forfeiture or punitive  
 2 damage award (not a fine), the decisions all involved a single offender. (*People ex rel.*  
 3 *Lockyer v. R.J. Reynolds Tobacco Co.*, 37 Cal.4th 707, 728 (2005); *City and County of*  
 4 *San Francisco v. Sainez*, 77 Cal.App.4th 1302, 1322 (2000). Unlike uniformly  
 5 imposed fines, a single offender's finances can be established and examined. Given all  
 6 the other expenses involved in owning and operating a vehicle, a maximum \$175 fine  
 7 does not affect an individual's "livelihood" as demonstrated by the undisputed  
 8 hundreds of thousands of people who have paid parking fines over the years. (UMF  
 9 D20.) Plaintiffs' arguments are irrelevant and immaterial to the issues in dispute.

### 10 **III. CONCLUSION**

11 Based on the foregoing, and the arguments presented by the City in the parties'  
 12 Joint Brief, the City's Motion for Summary Judgment should be granted. Now that  
 13 Plaintiffs had the opportunity to conduct their discovery and investigation, this matter  
 14 is ripe for summary judgment. The issue in dispute is a legal question for the Court's  
 15 determination – whether the City's parking meter citation schedule is excessive –and it  
 16 should be answered in the negative. While Plaintiffs make arguments, strikingly  
 17 absent are any relevant material facts in dispute or any case decisions that support  
 18 Plaintiffs' contentions. Plaintiffs have not, and cannot, demonstrate that their claims  
 19 for relief can succeed as a matter of law thereby mandating that summary judgment be  
 20 entered in favor of the City as to Plaintiffs' Second Amended Complaint.

21 DATED: May 18, 2017 MICHAEL N. FEUER, City Attorney  
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